

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:07-HC-2204-FL

UNITED STATES OF AMERICA,

Petitioner,

v.

ROBERT WAYNE FISCUS,

Respondent.

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ORDER

This matter is before the court on respondent's second motion to dismiss the government's petition for commitment pursuant to 18 U.S.C. § 4248 (DE # 8). Petitioner has responded and opposes the motion. The matter is ripe for ruling.

Respondent's motion to dismiss incorporates by reference the arguments originally made in United States v. Comstock, No. 5:06-HC-2195-BR (E.D.N.C.). On May 17, 2010, the Supreme Court, in United States v. Comstock, 130 S. Ct. 1949 (2010), upheld 18 U.S.C. § 4248 as valid under the Necessary and Proper Clause and remanded Comstock to the Fourth Circuit Court of Appeals for further proceedings. Upon remand, the Fourth Circuit held that the "clear and convincing evidence" standard by which the government must prove an individual is sexually dangerous for purposes of commitment under § 4248 does not violate the constitutional guarantee of due process. United States v. Comstock, 627 F.3d 513, 524 (4th Cir. 2010). Therefore, the appellate decisions in Comstock provide no grounds on which to grant respondent's motion. Respondent's second motion to dismiss (DE # 8) is DENIED without prejudice.

SO ORDERED, this the 25th day of March, 2011.



LOUISE W. FLANAGAN
Chief United States District Judge